

IN THE UNITED STATES DISTRICT COURT  
 FOR THE EASTERN DISTRICT OF TENNESSEE  
 CHATTANOOGA DIVISION

TANJA BENTON,

Plaintiff,

v.

BLUECROSS BLUESHIELD OF  
 TENNESSEE, INC.,

Defendant.

1:22-CV-118

Chattanooga, Tennessee  
 June 27, 2024

BEFORE: THE HONORABLE CHARLES E. ATCHLEY, JR.  
 UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

DOUGLAS S. HAMILL  
 MIKEL & HAMILL  
 620 Lindsey Street  
 Suite 200  
 Chattanooga, Tennessee 37403

FOR THE DEFENDANT:

ROBERT E. BOSTON  
 JOSHUA T. WOOD  
 DAVID ZEITLIN  
 HOLLAND & KNIGHT  
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JURY TRIAL  
 THIRD DAY OF TRIAL  
 EXCERPT OF PROCEEDINGS  
CLOSING ARGUMENTS

1 (Prior proceedings were heard but  
2 not requested to be transcribed herein.)

3 MR. HAMILL: Thank you.

4 Ladies and gentlemen of the jury, thank you for  
5 your patience in this case.

6 If you recall, in BlueCross's opening  
7 statement, you may recall that Mr. Boston gave you a  
8 baseball analogy about an umpire calling the balls and  
9 strikes. You see, it's the umpire's job to treat every  
10 batter the same, but that's not the case here. Not  
11 everyone involved in BlueCross's vaccine accommodation  
12 process was treated the same. You see, it was the  
13 employee who didn't get a fair shake in this process,  
14 and that's because the accommodation process was not a  
15 level playing field. Far from it.

16 The better baseball analogy I like to make for  
17 this case would be like telling the employee to step up  
18 to the plate, but you can't use a bat to swing at any of  
19 the pitches.

20 See, throughout this case, BlueCross has told  
21 you that it wanted to ensure its accommodation process  
22 was uniform, but it was rigged to effectuate a uniform  
23 outcome. No employee that requested a religious  
24 accommodation would remain employed after the 30-day  
25 deadline. And the proof has shown that is exactly what

1 happened. And Dr. Tanja Benton was one of the victims.

2 Now, that's the big picture. Now let's look at  
3 the three specific questions that you, as a jury, will  
4 be asked to answer in this case. And right off the bat,  
5 I'm going to show you the verdict form that you will be  
6 given.

7 The first question that you have to answer:  
8 Has the plaintiff, Tanja Benton, proven by a  
9 preponderance of the evidence that her refusal to  
10 receive the COVID vaccination was based upon a sincerely  
11 held religious belief? The answer is yes.

12 Now, under the law that the judge will charge  
13 you, religion includes all aspects of religious  
14 observance and practices as well as beliefs that are, in  
15 the plaintiff's own scheme of things, religious. Now,  
16 one factor to consider is that religion addresses  
17 fundamental and ultimate questions having to do with  
18 deep and imponderable manners.

19 Now, Dr. Benton has explained her Christian  
20 belief about the sanctity of human life. She believes  
21 that God created humans in his own image. Human life,  
22 she believes, begins at conception. According to  
23 Dr. Benton's religious beliefs, a fetus is a human. You  
24 see, the origin of life and the connection to God is  
25 certainly a deep and imponderable manner for the

1 definition of religion under the law that you'll be  
2 given.

3 Religion is also defined as a comprehensive --  
4 being comprehensive in nature. It consists of a belief  
5 system. Dr. Benton's Christian beliefs are all  
6 encompassing. She testified that she is guided by God's  
7 teaching in the Bible. And those biblical teachings,  
8 she's testified it shapes and influences how she views  
9 life and her mission in life.

10 Now, the law's protections, you'll hear, apply  
11 to religious beliefs whether they are common or  
12 non-traditional, regardless of whether they are  
13 recognized by any organized religion. So just because  
14 Dr. Benton is not a formal member of a particular church  
15 or denomination, she -- her religious beliefs are still  
16 protected under the law.

17 So what proof have you heard about Dr. Benton's  
18 objections being sincerely held religious grounds for  
19 objecting to the COVID vaccination? Well, first, you  
20 got to see Dr. Benton's detailed accommodation request  
21 form that she submitted, and if you recall looking at  
22 that, all her grounds for objections were based upon her  
23 religious beliefs. There's nothing in her accommodation  
24 form that had anything to do with I am not taking this  
25 vaccine because no one can tell me what to do about my

1 body. There was no complaints or objections based on  
2 medical reasons, such as I don't think the vaccine is  
3 safe, I don't think the vaccine is effective. No  
4 political statements whatsoever. The only grounds she  
5 gave were religious based.

6 Now, you don't have to just go off what she  
7 stated at that time. You see, you have a good snapshot  
8 into what she sincerely believed because you've seen  
9 what she's posted in private chat groups and in private  
10 texts with her friend, and that was part of Defense  
11 Exhibit 10.

12 You may recall her statement on this private  
13 chat group where she was describing for her, Ephesians  
14 6:10-18 had been a verse that she'd been dealing with  
15 for several months now. "We're engaged in a spiritual  
16 war." You see, Dr. Benton sincerely believed that her  
17 act of objecting to COVID vaccination was an act of  
18 spiritual warfare that she believed was God honoring,  
19 and she sacrificed her job for that.

20 You'll also remember a private text message  
21 that she had with a coworker, Renea Tennyson, and this  
22 text message was two days before she lost her job. She  
23 and Ms. Tennyson were talking about the impending  
24 termination. Ms. Tennyson would say, well, wish you the  
25 best of luck. You remember what her response was? She

1 said to "keep this thought with you today, it takes  
2 tremendous courage to do what you're doing. I know God  
3 is on our side no matter what bad decisions they make."  
4 Now, she was motivated by her religious beliefs. If she  
5 was irreligious, why in the world would she be talking  
6 about spiritual warfare and believing that God was on  
7 her side?

8           You can think about these instant chat messages  
9 and text messages sort of like someone's private journal  
10 or a diary. These are things that she's sharing  
11 privately without any expectation that anyone's going to  
12 be reading them. They're sincere. They're genuine.  
13 They were made roughly at the same time, within about  
14 two months of her decision to object to the COVID  
15 vaccination. They're trustworthy sources, ladies and  
16 gentlemen. If you want to look into her heart --  
17 because that's kind of what you're having to do -- was  
18 this sincerely held? Was this a religious belief? The  
19 answer is yes. This is strong proof of that.

20           Now, there -- BlueCross has not put on any  
21 proof that Dr. Benton has ever told anyone else I  
22 objected to COVID vaccination for this reason and that  
23 reason, politics, blah blah blah. There -- you have not  
24 seen any proof where she has made contradictory  
25 statements. She has been consistent -- consistent

1 throughout this case on that point.

2           And, ladies and gentlemen, you heard the  
3 testimony of her sister-in-law, Lynn Benton. Now, when  
4 you look and consider her testimony, you'll realize that  
5 the sister-in-law really does not have a close  
6 relationship with Tanja. They haven't spoke on any  
7 spiritual matters in over 20 years. And you know why?  
8 Because they have divergent views on spiritual matters.  
9 It is not uncommon for people who have completely  
10 opposite religious views not to bring religion up in  
11 conversation, particularly if you very rarely talk with  
12 the person. Lynn Benton admitted that she had only been  
13 at her house twice a year. Thanksgiving, Christmas.  
14 Three hours at a time.

15           She finally had to admit that no, she'd never  
16 had any conversations with Dr. Benton about her  
17 spiritual or her Christian beliefs. No conversations  
18 about her beliefs about abortion and sanctity of human  
19 life. No conversations whatsoever about why Dr. Benton  
20 objected to the COVID vaccination. And she finally had  
21 to admit that she really has no proof as to why  
22 Dr. Benton objected. She was speculating because  
23 Dr. Benton is a private person.

24           In fact, she admitted Tanja doesn't talk much.  
25 And that's right. She doesn't talk much, and she's not

1 going to share her private Christian beliefs with  
2 someone that she's not close to and that she knows  
3 doesn't have the same beliefs as her.

4           So, in summary, you don't -- as a jury, you  
5 don't have to necessarily agree with Dr. Benton's  
6 religious beliefs. All you have to do is determine,  
7 were these beliefs sincerely held? Were they genuine?  
8 And was that the basis for her objection to the COVID  
9 vaccination? We have submitted proof, and we believe  
10 that is the answer.

11           Now, the second question you're going to have  
12 to answer is -- and the burden has now shifted over to  
13 BlueCross -- has BlueCross proven by a preponderance of  
14 the evidence they offered a reasonable accommodation to  
15 the plaintiff?

16           Now, BlueCross had a procedure on the books  
17 whereby the employee's supervisor and frontline HR  
18 person were supposed to make a determination on whether  
19 a reasonable accommodation could be made or not. You  
20 heard that. But BlueCross deliberately ignored this  
21 procedure and decided they were going to come up with a  
22 new procedure. This was a predetermined decision that  
23 they came up with. The offer that you saw was made well  
24 before Dr. Benton or any employee even had input, even  
25 knew that the vaccine mandate existed or was going to



1     apply to them.   This -- this was an accommodation  
2     that -- that the company had come to that was, again,  
3     predetermined and made without ever reading any of the  
4     specific requests.

5             You heard the proof.   Jennifer Shields didn't  
6     thoroughly read through Dr. Benton's accommodation  
7     request.   She just merely funneled it up to Attorney  
8     Wood.   Hal Gault, her boss, said, I didn't read it.  
9     That wasn't our job.   HR's role was not to read these  
10    accommodation requests.   We funnel it up to legal.  
11    Chief human resources officer who was part of the  
12    executive leadership team: I didn't read it.   That's  
13    not our job.   That's what legal does.   This was a  
14    one-size-fits-all offer that the company made.   There  
15    was no individualized assessment.

16            You remember what the old policy was?   Get the  
17    frontline supervisor talking with the employee and the  
18    frontline HR, and they're going to work it out.   There  
19    was nothing like this.   There was nothing  
20    individualized.

21            They told you that they were assessing a  
22    generalized job category called "public facing."   Okay?  
23    That's over 800 employees.   They never knew anything  
24    about Dr. Benton.   They knew nothing about what she did.  
25    They didn't know how frequently she interacted with

1 clients. They didn't know who the clients were. They  
2 knew nothing whatsoever about Dr. Benton when they came  
3 up with their accommodation, the take-it-or-leave-it  
4 accommodation.

5           You recall when they sent the email and  
6 Dr. Benton was asking, what other information do you  
7 need? Do you remember the response in the -- in the  
8 template email that came from legal? Doesn't matter.  
9 Doesn't matter what you have to say. We don't need any  
10 more additional facts from you because, remember, this  
11 is the offer as is. It's not going to change.

12           Now, looking at the three parts of the offer,  
13 the first one was they were going to remove for 30 days  
14 her public-facing duties. Well, what benefit was that  
15 for Dr. Benton? You see, Dr. Benton testified and her  
16 boss testified she didn't have any public-facing duties  
17 for 30 -- in that 30-day period, so there was nothing to  
18 modify. In fact, she didn't have any public-facing  
19 duties for the next five months. So was that offer even  
20 beneficial whatsoever to her? No.

21           Second, they said, well, you can use this  
22 30 days just to figure out maybe you should go get  
23 vaccinated. Okay. That's insulting because  
24 Dr. Benton -- the reason why she requested the  
25 accommodation is 'cause she said I can't -- I can't get

1 vaccinated. So to tell her jettison your religious  
2 beliefs, get vaccinated so you won't lose your job, is  
3 very insulting.

4           The third thing that they offered was this:  
5 You've got 30 days to look for a new job. Good luck.  
6 We're not going to actually give you any affirmative  
7 assistance.

8           Now, ladies and gentlemen, when Judge Atchley  
9 charges you with the law, the law says it requires  
10 affirmative action by the employer to solve the conflict  
11 between the employee's religious belief and an  
12 employment rule in conflict. There was no affirmative  
13 action here. No assistance was given to her. You  
14 recall she asked time and time again, can you at least  
15 tell me which of these jobs are subject to the mandate  
16 and which are not? She asked multiple times. And you  
17 heard Jennifer Shields as well as the others say, no, we  
18 didn't have a list to give to her. She could just look  
19 it up.

20           And she talked about the frustrations trying to  
21 go through all these job descriptions. There was no  
22 conspicuous heading that said "This job is subject to  
23 the COVID vaccination mandate." And, finally, three  
24 days before the deadline, the recruiter said, oh, yeah,  
25 your -- you should be looking at some kind of innocuous

1 type of language that says, oh, "various immunizations  
2 may be required." That's the language you should be  
3 looking for. That just shows how confusing and  
4 frustrating it was for her.

5 When we talk about there was a hiring freeze at  
6 the time, not very helpful when you've got a short  
7 30-day window that suddenly job vacancies are delayed in  
8 posting. And you heard a lot of proof about the length  
9 of time it took at BlueCross for jobs to be posted and  
10 then filled.

11 Do you remember Mike McPherson? He said yeah,  
12 it takes a long time. In fact, it took him over six  
13 months to fill Dr. Benton's job. The two vacant jobs  
14 that Dr. Benton eventually applied for, did you see the  
15 time window, how long it took for them when she got her  
16 rejection letters? January, February, way past the  
17 November 3rd deadline for her. This was a long,  
18 cumbersome process, and she was going to have to stand  
19 in line with all the other people applying for vacant  
20 jobs. She wasn't going to get a speed up on an  
21 interview, and it was going to be very, very hard.

22 The recruiter. What did the recruiting  
23 department do for Dr. Benton? Nothing. They didn't  
24 even pop up. If -- if -- if the recruiting department  
25 was going to provide any assistance, don't you think

1     that they would show up at the beginning of the 30-day  
2     period? The only time a recruiter popped up was  
3     November the 1st, right at the end, and that wasn't to  
4     say hey, let me work with you with your skills. I've  
5     identified some jobs. Let me help you. Let me try to  
6     speed up this interview process. We know who the  
7     interviewers are. At least get you in the cue.  
8     Nothing. She didn't even get interviews for the jobs  
9     that she applied for.

10             Finally, very important, if you recall, there  
11     was an email that Jennifer Shields sent to her boss, Hal  
12     Gault, and she was -- this was at the very end of the  
13     recruiting process. If you recall seeing her email,  
14     Ms. Shields was reporting to her boss, you know what?  
15     There's a whole bunch of employees that have been  
16     requesting the accommodations that I feel like they have  
17     not been benefited from by the accommodation and that  
18     the 30-day accommodation was not workable.

19             Amen. It wasn't workable. You see, the proof  
20     is the company's proposal was not a permanent solution.  
21     It was temporary at best. It was really just a  
22     temporary 30-day delay in her termination.

23             So has the company, BlueCross, met its burden  
24     of proving that this was a reasonable accommodation?  
25     It's their burden, not ours. The answer is no. They

1 have not met their burden. This was not a reasonable  
2 accommodation.

3 The last thing that you're -- question that you  
4 have is, again, something that BlueCross has to prove.  
5 Has BlueCross proven by a preponderance of the evidence  
6 that it could not reasonably accommodate the plaintiff's  
7 religious beliefs without undue hardship? It's their  
8 burden.

9 BlueCross claims it would be an undue burden  
10 for Dr. Benton to meet virtually with her clients.  
11 Well, what proof has BlueCross come forward with that  
12 meeting virtually with clients has somehow caused a  
13 substantial increase in costs? Have -- have you seen  
14 any evidence of damage to client relationships because  
15 Dr. Benton was virtually communicating with the clients?  
16 No.

17 Do you remember Tony Pepper? Tony Pepper was  
18 the guy in charge of all the major account clients.  
19 Those are every one of Dr. Benton's clients. He came in  
20 and said, hey, I know if my clients don't like things,  
21 and my clients have said nothing about we don't like  
22 virtual communications, we want to have all of ours  
23 in -- in person. No.

24 And do you remember the key here? The proof is  
25 it was the client's choice, not BlueCross's. The

1 client's choice whether these were going to be in person  
2 or whether they were going to be virtual. And at the  
3 time that this was going on, the clients were resoundly  
4 choosing virtual. You heard the proof. All of 2021,  
5 every one of her clients chose virtual. All of 2022,  
6 all of her clients chose virtual.

7 Mr. McPherson, the only person that has  
8 testified for BlueCross on this point, claims that, oh,  
9 in his opinion, in person is just better. Okay. Well,  
10 it's kind of hard for him to even make such a statement  
11 when he's never even witnessed Dr. Benton performing her  
12 client meetings virtually.

13 There's been no evidence whatsoever that her  
14 virtual presentations were any less effective than her  
15 in person. Y'all haven't seen any evidence of a loss of  
16 business, of money damages, of clients being unhappy.  
17 Nothing. BlueCross has failed utterly to meet its  
18 burden of showing that Dr. Benton's proposal was an  
19 undue hardship.

20 So where does that leave things? Having found,  
21 number one, that Dr. Benton had a sincerely held  
22 objection to COVID; number two, that the accommodation  
23 offered to her was not reasonable; and, number three,  
24 her proposal was not an undue hardship, that means she's  
25 entitled to --

1 THE COURTROOM DEPUTY: Five minutes.

2 MR. HAMILL: -- damages. And so the damages  
3 here would be her lost pay and benefits. This is  
4 unrefuted testimony. Okay? \$170,000.

5 She suffered emotionally. You've heard that.  
6 I'm not going to go back through that. That's up for  
7 you -- that -- the number you put there, that's for you  
8 to decide.

9 The last question you have to deal with is  
10 punitive damages. Number five, if you award damages in  
11 this case, do you find the plaintiff, Tanja Benton, has  
12 proven by a preponderance of the evidence that she is  
13 entitled to punitive damages?

14 What's the evidence on punitive damages here?  
15 The executives in this case that -- many of the HR folks  
16 that testified, they know what the law is. They told  
17 you we know exactly what the law is when it comes to  
18 religious accommodations in the workplace and the  
19 protocol. But in this case, they run -- they did an  
20 end-run. They deliberately chose not to make this an  
21 interactive process. They deliberately chose to  
22 jettison their old policy.

23 And when they claim that they're having an  
24 interactive process, it's lip service. Do you -- do you  
25 remember where the interactive process was? Was it at



1 the beginning with the employee and the company talking  
2 about how can we come to a reasonable accommodation?  
3 No. They shifted it out to the end. The company said,  
4 here it is. Now you can have your interactive process.  
5 And what -- what was the point of that? They said,  
6 well, so the employee could feel like they'd been heard.  
7 But it wouldn't change anything.

8 Ladies and gentlemen, this was a predetermined,  
9 rigged method, and the process was uniform for a reason.

10 Remember Tony Pepper? He tried to engage and  
11 advocate for some of his employees not to get -- to --  
12 who didn't want to get vaccinated. He said we can  
13 handle it at the local level. We can handle it here.  
14 Management. They said no, no, no, no, no. This is a  
15 uniform process. Up to legal it goes. You see, the  
16 company was afraid that some of these employees would  
17 actually get accommodations. They would keep their job.  
18 And that is not what they had in mind.

19 The proof shows that every single person that  
20 requested a religious accommodation lost their job come  
21 November the 4th, 2021. You think that's a coincidence?  
22 You see, the company rigged -- with full well knowledge  
23 of what they were doing -- rigged this accommodation  
24 procedure to effectuate a uniform outcome, and that is  
25 exactly what they did. No employee like Dr. Benton came

1 out of this process with any benefit whatsoever except  
2 for a pink slip.

3 Thank you.

4 THE COURT: Thank you.

5 MR. BOSTON: Members of the jury, when I first  
6 met you two days ago, I asked you if you would be able  
7 to consider my client as a person and people like Ms. --  
8 Ms. Benton is, and you said yes. I -- and I appreciate  
9 you doing so. Thank you for your time and your  
10 attention and listening to me and the courtesies you've  
11 shown.

12 This is the last time that we visit with one  
13 another. I have 35 minutes, which we've asked the Court  
14 to give each of us. In doing that, at the end of my  
15 comments, Mr. Hamill can return to the podium, and he  
16 can simply look at you and say everything Mr. Boston  
17 said is wrong. It's not supported. It's not there. I  
18 disagree. It's argumentative. I can't do anything  
19 other than sit and watch. This is the last time I get  
20 to come -- I can wring my hands, but that's it. Thus,  
21 I'm asking for just a little bit of your patience as I  
22 go through the points I want to summarize on behalf of  
23 BlueCross.

24 You notice that Mr. Hamill mentioned very  
25 briefly, in quick passing, the economic claim that his

1 client is making? Rest assured, Ms. Benton is telling  
2 you she wants substantial money. If I don't address it,  
3 then it will come back up to me when I'm sitting down  
4 and say he didn't even raise the money issue, he didn't  
5 even talk about it. So I'm doing it not because my  
6 client believes there's any money due, because I want to  
7 put it in context of what is being sought. If I don't,  
8 I won't have the ability ever to address it no matter  
9 what he says about it.

10 Is a person entitled to over 100 grand of  
11 compensation based upon what my client contends is a  
12 difference of opinion and difference of view as to how  
13 somebody is going to try to save lives? I've just heard  
14 in the trial that my client's approach was a sham and it  
15 was somehow some type of dictated, created thing to  
16 harm.

17 Let's go back into the context of what we faced  
18 back in 2020 and '21. It was an unprecedented pandemic  
19 where lives were being lost, and our client being a  
20 healthcare, a leader in the field, was addressing it to  
21 save people's lives as well as to help their own safety,  
22 not harm. My client has been presented in tactful  
23 language as some type of villainous operation that's  
24 trying to get rid of people, not keep people safe.  
25 That's why we went to the mandate to start with.

1           Recall Dr. Willis's testimony. 56 different --  
2   56 different medical organizations had come forward  
3   supportive of the vaccine at the time it had come into  
4   play, which it was available. It was used to return a  
5   corporate entity and organization with multiple  
6   employees back to how it was before, to evolve into it,  
7   yet the vaccine mandate has become in the presentation  
8   presented to you as some type of horrid thing that's  
9   designed to harm, and that's not the case.

10           The proof from the people who talked about how  
11   it was developed is it was there to help. It is there  
12   to provide comfort, safety, and a resource to keep  
13   people safe and healthy. That's why it was there. We  
14   are being accused of doing something wrong and illegal  
15   when we're trying to do something that is helpful to the  
16   entire country at the time.

17           In return for that, if you'll look at the jury  
18   instructions that Judge Atchley is going to give you  
19   shortly, there's a stipulation that's in there that's  
20   on -- I think it's going to be on page 9, page 10 when  
21   you look at the instructions, which will be written in.  
22   The stipulation says that Ms. Benton -- Dr. Benton was  
23   making \$116,000 at the time. She is seeking from you --  
24   that's her base salary. She's seeking from you well  
25   above that.

1           If you recall her cross-examination, I asked  
2 her, how did you get that? And she admitted my lawyer  
3 came up with the calculation of that. It's jumped  
4 dramatically both in base and compensation as well as  
5 what she is seeking from you. This is the back pay  
6 of -- back pay and benefits.

7           In addition -- in addition, she is seeking a  
8 substantial amount for benefits, which, if you'll recall  
9 the Plaintiff's Exhibit Number 22, this is her offer  
10 letter. You'll have these, by the way, when you go back  
11 to the jury room. 22 is the offer letter. It provides  
12 that she is getting -- didn't go in detail -- 401(k),  
13 4 percent match, company paid health, fully funded HSA,  
14 a health savings account, dental coverage, long- and  
15 short-term disability, a fully stocked kitchen,  
16 unlimited paid time off, general parent -- parental  
17 leave, as well as -- as well as stock options.

18           She is asking you to reward her for a decision  
19 that she needed to make for her own reason in a huge  
20 amount of money. I'm asking you not to take that bait.  
21 Don't do it based upon what she has presented to you.

22           In addition, Dr. Benton is asking you to award  
23 her compensatory damages, some damages for pain. On  
24 what basis would you do this on this record? Dr. Benton  
25 said it was difficult, it was hard, like life in general

1 can be for all of us. Change is difficult. But was the  
2 compensatory damages proven? You can't do it, members  
3 of the jury, based upon sympathy, compassion, just on  
4 that. You have to be doing it on proof. And what did  
5 she prove?

6 Well, very quickly, Dr. Benton seems like a  
7 nice person to all of us. She is accomplished. She's  
8 educated. She's done a lot. She has a job that many,  
9 many people in the world would love to have. But did  
10 she prove that she is -- is deserving of being  
11 compensated by money in addition to her other claim?

12 She's able to function in her life. She  
13 takes -- takes care of her family. She still works.  
14 She's active, involved in the things she does. She has  
15 all the things that she had before. This is not a case  
16 that's deserving of your consideration for compensatory  
17 damages. It is a difference of view on a business and  
18 personal decision from both sides looking at one  
19 another. That doesn't dictate an award of damages.

20 Finally, Mr. Hamill mentioned the concept of  
21 punitive damages. Punitive damages are an award -- it's  
22 an opportunity to punish, to punish someone or to make  
23 an award to prevent something else from happening.

24 Take the latter first. There's no longer a  
25 mandate based on the government -- government action.

1 There was an injunction that was entered that precluded  
2 that from being done, and there's been no hint,  
3 discussion, or other references to it since that time.  
4 There is no risk that something will happen further.  
5 Even if you disagree with my client's decision before,  
6 there is no risk that it were to come back. No evidence  
7 was proposed that it could.

8 In addition, punitive damages are to punish  
9 somebody. Now, think back with what I said a moment ago  
10 and what you've heard from the trial. What was my  
11 client's goal with going to 800 people and saying we  
12 want you to be -- be vaccinated so that you help stop  
13 the spread of the pandemic for our people -- our people  
14 we deal with, our vendors, and our customers? Do you  
15 punish someone for doing the things that the world was  
16 doing at the time, which was attempting to stop it and  
17 attempting to address it? Did what everyone else was  
18 trying to do. Let's find a solution in -- in a here --  
19 heretofore never experienced situation.

20 Is that something that you punish someone for  
21 even if you disagree with the underlying business  
22 decision? And the answer is no.

23 I point out each of those three things related  
24 to damages only because I don't have the opportunity  
25 ever to mention them again.

1           My client is asking you to answer the  
2     questions, are we liable? No. No. No in all of those.  
3     The verdict form you look at, it's -- it's your score  
4     card as to what you're doing. I'm asking you to rule in  
5     favor of BlueCross BlueShield on each of those -- on  
6     each of those situations.

7           Now I want to turn to those, if I may, the  
8     three questions that have to be asked. The first one is  
9     the issue of sincerely held religious belief. Awkward,  
10    difficult, concerning. Dr. Benton testified from the  
11    start, and she said I had a sincerely held religious  
12    belief. And if you'll remember, what she did was she  
13    provided -- my -- mine has gotten marked up with notes,  
14    but this is Joint Exhibit Number 7. And -- excuse me.  
15    That's -- I'm sorry. That's -- I misstated the number.  
16    Excuse me. Just a second.

17           MR. WOOD: Number 6.

18           MR. BOSTON: Joint Exhibit Number 6 was her  
19    letter that she wrote asking for the accommodation. And  
20    in it, what she has said is, "I strive to honor God in  
21    all I" -- "I do. My sincerely held religious beliefs  
22    are" -- "are all-encompassing aspect" -- "are  
23    all-encompassing aspects within my life. They govern  
24    all I do in life." Her words. Her summation. Her  
25    suggestion.



1           When we were talking on cross-examination about  
2 those sincerely held religious beliefs, she said, yes, I  
3 have them. She said, in essence, it's in here, and I  
4 remember pointing to my chest at one point because she  
5 said it's internal. I think her words were "they  
6 are" -- "my religious beliefs are what I profess."

7           There's no way to go back other than to take  
8 her word for it. There is no doctrine that she follows.  
9 There is no church, scripture, or material matter  
10 approach that she has presented to you for which we  
11 would gauge it if we were asked to do it. And that's a  
12 difficult thing for us to do 'cause we all have our  
13 internal needs, various means to get through life. But  
14 she has told you, in her own words, this is what I  
15 reflect. They are all I do in life.

16           When I was presenting evidence on this point, I  
17 brought forward to you, through the witnesses, several  
18 different perspectives, though, that Dr. Benton also  
19 admitted occurred. The first one of those was her  
20 postings. First one was the postings, and that was her  
21 own social media uses. I took a snippet of those -- I  
22 took six of them. And there's exhibits. Defendant's  
23 Exhibits 10 and 11. But we put them up there and -- I  
24 put them up there so you would have the different  
25 picture of the rest of her life.

1           Her -- her objections to the vaccine were taken  
2   and were influenced by multiple different resources that  
3   she was using and was involved in in her own life and in  
4   her own interactions with people. They're there. I  
5   didn't come creating one of them. I just showed them to  
6   you. And they show a different view. They show  
7   inconsistencies between action and behavior and comments  
8   and -- and what she did.

9           What were those? Remember her commentary her  
10   boss was a member of a cabal? He might be in the CIA.  
11   Where one -- where one go, we all go, which is a phrase  
12   used in some of the social organizations that are  
13   designed -- or excuse me -- they're influencing other  
14   types of reasons other than religious accommodations.  
15   We don't have any doctrine we can go to to see what a  
16   church or other organization of religion teaches or they  
17   follow and whether or not she's consistent with that.

18           We know she said she had taken her own  
19   vaccinations in prior times and never investigated how  
20   they were created, whether they were influenced by way  
21   of testing and/or development with aborted fetal cells.  
22   We know that she had her children vaccinated by the same  
23   thing without any investigation. We know that she took  
24   her kids out of school because of the masking needs that  
25   she was objecting to as opposed to vaccination needs.

1 That's inconsistent with you if you're -- if you're  
2 objecting to vaccinations.

3 One of the things you do is look and see if  
4 there's consistency in what you did versus what you  
5 said. And I submit to you, members of the jury, one of  
6 the decisions you have to make is did -- by a  
7 preponderance of the evidence, more likely than not --  
8 more likely than not, did she prove to you that her  
9 objection was religious based or not? If it was not,  
10 the first question is you do not -- you find she did not  
11 have a sincerely held religious belief. And that ends  
12 the inquiry for your trial.

13 The second issue that we have to address in the  
14 verdict form is the one about whether or not the  
15 accommodation was reasonable. You saw what it was, and  
16 we've talked about this -- I think the right word is  
17 "ad nauseam" -- until we're sick of it. Everybody has.  
18 Were there things that were offered that were reasonably  
19 designed to accommodate a need not to be vaccinated?  
20 That is a question of judgment. It is a question of  
21 difference of opinion.

22 Dr. Benton would say no, they weren't  
23 reasonable. My client had pointed out in an effort  
24 to -- to explain what it did at the time, why it picked  
25 the ones it did. They were fivefold. They were in

1 Jennifer Shields' summary email that you saw yesterday  
2 when she was testifying. And they were presented in  
3 ways of time, resources, people, accommodation, effort,  
4 possibilities, and continuation after the relationship  
5 might be there for a rehire. Those are steps.

6 An employee is not entitled, members of the  
7 jury, to their accommodation. That is not the law.  
8 They are entitled to an accommodation that's reasonable  
9 under the circumstances. My client was not faced, when  
10 it put in place its mandate, with one person. It was  
11 faced with everybody that had to be considered within  
12 its organization.

13 If it's going to do what the mandate was for,  
14 which is help create an opportunity for safety and  
15 health to take over versus death -- death and  
16 destruction otherwise -- that's what was faced. Recall  
17 back at the time, this is not an esoteric-type issue  
18 that Mr. Hamill would want us to have perfect -- perfect  
19 guidance on, hindsight to deliver it. Didn't work that  
20 way. It didn't work that way.

21 The accommodation was reasonable under the  
22 circumstance, and it was designed to find some ground  
23 that would allow there to be progress towards a  
24 solution.

25 The third question comes. Was the -- if, in

1 fact, the reasonable accommodation was made, was it a  
2 hardship to do something else different or otherwise?  
3 And a lot of that comes down to Mr. McPherson's  
4 testimony, and this goes into the issue about whether or  
5 not the department could, should, needed to, or was --  
6 needed to continue to operate temporarily as it had,  
7 which is pull back, or could it move forward back to  
8 where it was in its operation?

9 Now, let's -- let's take Mr. McPherson. He's  
10 the one that testified mostly about what was needed and  
11 what was required. Let's critique Mr. McPherson's  
12 opinion. He talked a lot. He also was passionate. And  
13 he also was very proud of his department.

14 But what was not questioned about  
15 Mr. McPherson? Two people, Tony Pepper -- Dr. Benton  
16 said he was honest, he was straightforward, he was  
17 transparent, and they would believe him. He told you  
18 why there was a need to come back to -- for face-to-face  
19 interactions. He described what it was, why it was  
20 important to the department, why it was important to the  
21 company, and why it was important to the clients. That  
22 reasoning was not impeached. It was questioned. It was  
23 not impeached.

24 Was he right or not? 71 percent of  
25 Dr. Benton's customers that she dealt with at the time

1 have come back to requesting face-to-face meetings. We  
2 know it was important. We know the company's -- this  
3 part of the company's business was based on that type of  
4 interaction, and Mr. McPherson testified why it was  
5 important to come back to it. Dr. Benton disagreed.  
6 She didn't need to -- want -- want to do it.

7 If you would pull up Joint Exhibit Number 6,  
8 Mr. Zeitlin.

9 I have one exhibit I would like to show you  
10 very quickly.

11 Go down to the bottom. The last page. If  
12 you'll bold up the paragraph, "the requested  
13 accommodations." The next to last paragraph. Get it  
14 all on the screen, if you would.

15 This -- this is what Dr. Benton is requesting,  
16 her requested accommodation. Find anywhere in there  
17 that there's any remote suggestion that I'm going to be  
18 able to come back to work as we were before, which is  
19 the meetings that annually were driven by the customers  
20 and relations with everybody else. It's not there.  
21 She, for what reasons that are important to her, put the  
22 stiff arm on it. There's not an accommodation that can  
23 be made other than what my client did after what she  
24 said.

25 When Dr. Benton says, "I'm willing to continue

1 to work in this same manner," that's the manner that had  
2 been going on during the time that we were in shutdown.  
3 It's not the way it was before. Other than throwing the  
4 mandate out the window, other than forgetting about the  
5 reason why it was put in place to start with, there's  
6 not a solution, according to what Dr. Benton has  
7 suggested to the company.

8 When that happens, the difference of opinion is  
9 framed. And the reasonableness of the other  
10 accommodations that were out there -- time, opportunity,  
11 the ability to transfer if there's an open position for  
12 which you're entitled -- become relevant.

13 Dr. Benton waited, members of the jury, till  
14 four days before the time had run before she ever  
15 started seeking other positions. If you recall her time  
16 frame, the company doesn't tell her when to go seek one  
17 or what it would be or what you're entitled to. It  
18 can't do it just for her. It's got all the other  
19 people. If it's going to act fair and equitable to  
20 everybody, it makes the opportunity available from which  
21 the individuals then will pursue it. It doesn't have  
22 the ability -- if -- if, in fact, I was seeking a job --  
23 if I was employed and I was seeking a job and somebody  
24 went and favored, you know, another person right there,  
25 that's -- that's to my disadvantage. It doesn't work

1     that way.

2                 Dr. Benton is a college-educated  
3     doctorate-level -- doctorate-level person. She has  
4     every ability to use the services, the portals, and the  
5     information at the company as everybody else. She chose  
6     not to, and the suspicion would be probably because she  
7     hoped things would change.

8                 But she was on notice that was running. When  
9     the time runs, it runs. She had the opportunity to seek  
10    additional employment afterwards. She chose not to.  
11    She got upset with me when I was asking her about would  
12    you do it? The opportunity was there, and she worked  
13    with people that she liked who were supportive of her.  
14    Maureen Lowe, Mike McPherson were -- as she told you,  
15    were good bosses. By that time, she was jobless. She  
16    didn't have the right taste in her mouth about how she  
17    felt she had been treated, so she didn't try to continue  
18    to do so.

19                Two other points I wanted to make. Dr. Benton  
20    mentioned -- in part of her proof, she said I only spent  
21    1 percent of my time that was doing face-to-face  
22    meetings. If you spend 1 percent of your time doing  
23    face-to-face meetings, does that undermine the  
24    importance, or does that increase their importance? It  
25    increases the importance 'cause that's the limited time



1     you have to provide the service that's applicable to  
2     that time and that action. Dr. Benton was using that  
3     arguing with me on cross-examination of -- that she was  
4     using that to point out it really wasn't important to  
5     have face-to-face time.

6             My client disagrees with that, and you heard  
7     why. It was very important to have the face-to-face  
8     time with customers and clients. That's how we had our  
9     business advantage. That's how we delivered our  
10    services. That's how we had grown.

11            Taking the analogy I think I made inartfully  
12    when I was doing my cross-examination, what if you  
13    have -- what if you have an athlete that is -- her or  
14    his event is the 100-yard dash? The 100-yard dash takes  
15    about 10 seconds to run it at a national level kind of a  
16    person. If, in fact, time is the indicator of  
17    importance, then that 10 seconds is pretty darn  
18    important for what you're doing. But it doesn't  
19    indicate that that employee is -- that athlete didn't  
20    have weeks and months and years of training and training  
21    to be ready to do it.

22            Dr. Benton had plenty of time to get ready to  
23    be a -- a -- an athlete in my analogy. But the time to  
24    run the race is not how you measure that. The  
25    importance of what you're doing at the time you're

1 running the race is what you look to. And here -- and  
2 here those face-to-face meetings are described, in my  
3 words, pretty much the bread and butter of what this  
4 department does. Dr. Benton was in a position where she  
5 couldn't do it for a reason that was important to her,  
6 but it's not an illegal reason.

7           The final thing I want to mention to you,  
8 members of the jury, is this, with, again, my thanks for  
9 your patience: Do you pay somebody hundreds of  
10 thousands of dollars or \$100,000 or some other  
11 calculation because they have a different view of how to  
12 make a judgment call that's important at the time in an  
13 unprecedented circumstance of the healthcare crisis to  
14 you? Or do you find that it's a sham when people are  
15 trying to save lives, not harm? Do you find that some  
16 kind of contrived thing -- that people are trying to get  
17 rid of Dr. Benton when you heard she was one of the  
18 better people in the department and what she did? Or do  
19 you find it's a situation where a difference of view has  
20 resulted in an unfortunate situation for two entities,  
21 BlueCross BlueShield and Dr. Benton?

22           Sometimes -- members of the jury, I'm going to  
23 leave you with this thought: Sometimes two good people  
24 just shouldn't be married to one another. Regardless of  
25 there being some accusation of fault, sometimes it

1 doesn't work that way. And in the fall of 2021, my  
2 client submits and I argue to you -- again, my thanks  
3 for your patience -- that's what happened. That's what  
4 happened. It doesn't create illegality based upon  
5 somebody's religion just because someone asserts that  
6 that is the reason why I think it might have done so.

7 I ask you -- it's interesting. I appreciate my  
8 adversary's point of raising the analogy I made in voir  
9 dire about the umpire -- about the umpire. The  
10 equivalent of what Dr. Benton is asking you to do is  
11 simply shoot the umpire and simply say she and he didn't  
12 make the right call. They didn't do it right. So they  
13 are somehow wrong even if all good intentions and all  
14 good efforts and all good judgment was to make the right  
15 call. Is having to make a call in a difficult situation  
16 subject to being criticized to the point of illegality,  
17 or is it you're doing the best you can in a never  
18 heretofore circumstance?

19 I'm asking you to consider my comments and the  
20 proof you heard from the witness stand and those  
21 exhibits and come back and make your ruling for  
22 BlueCross BlueShield of Tennessee.

23 And thank you very much for listening to my  
24 comments.

25 THE COURT: Thank you, Mr. Boston.

1           MR. HAMILL: Ladies and gentlemen, as I told  
2 you at the outset, this case is not about the legalities  
3 of the vaccine mandate itself. This case is not about  
4 whether the vaccines are safe or effective. And yet  
5 time and time again throughout this case, you've heard  
6 BlueCross say we're the only ones that seem to care  
7 about people's health. Dr. Benton doesn't seem to care.  
8 I'm sorry. We have a problem with that. Did you see  
9 what her request was? To continue working virtually.  
10 How in the world can Dr. Benton be any kind of risk of  
11 spreading COVID to any clients or anyone if she's  
12 working virtually? And that's what she had been doing  
13 this whole time. That was her request.

14           BlueCross has used the word "unprecedented" way  
15 too many times in this case, but let me tell you when  
16 you look back at the time Dr. Benton made her  
17 accommodation requests, was there any testimony --  
18 was -- did you hear anything that -- that would give her  
19 any opinion that, oh, things are changing, we're  
20 supposed to be going back to in person and meeting with  
21 clients? No. Tony Pepper said no, that wasn't being  
22 discussed. Mike McPherson was all over the board, but I  
23 finally got him to admit no, no clients were asking for  
24 in-person meetings. Why is she supposed to raise that  
25 as a proposal when it's not even on the table? Okay.

1           But I will tell you this: Do you recall  
2   Ms. Shields' testimony about what was discussed in the  
3   October 27th meeting? She admitted that Dr. Benton, at  
4   that point in time, when there were -- when she was  
5   told, oh, yeah, there's something about in person, did  
6   you hear the testimony from Ms. Shields? She said that  
7   Dr. Benton said, I'll go back in person, I'll mask, I'll  
8   social distance, I'll do periodic testing. If that's  
9   what you want me to do, I'm fine with that. BlueCross  
10   has mischaracterized throughout this whole case this  
11   theory that Dr. Benton just didn't want to meet in  
12   person and she was just going to slough off her job  
13   duties. That is so, so far from the truth.

14           It is undisputed in this case that Dr. Benton  
15   was a great employee. You heard from Mike McPherson it  
16   took him over six months to replace her. If Dr. Benton  
17   was such a great employee, why didn't BlueCross rehire  
18   her once it halted the vaccine mandate? That would have  
19   been a simple solution, don't you think?

20           And is it merely a coincidence that every  
21   single employee that requested a religious accommodation  
22   wound up losing their job? Every single one. What does  
23   that tell you about the so-called "reasonableness" of  
24   BlueCross's accommodation it offered to everybody,  
25   including Dr. Benton? It wasn't a reasonable

1 accommodation.

2           There's no evidence of undue hardship. No  
3 evidence whatsoever that there was any damage -- any  
4 potential damage that could have been done for  
5 Dr. Benton to continue doing what she had successfully  
6 been doing for 18 months.

7           And, ladies and gentlemen, as far as sincerely  
8 held religious beliefs, you saw her writings, her  
9 private personal writings. This is spiritual warfare.  
10 Spiritual warfare that she's been enduring for the past  
11 two months, that she believes that God's on her side.  
12 Do you want to know what's in her heart? That's what's  
13 in her heart. She lost her job because of that.

14           She's not asking for the moon. She's only  
15 asking for the compensation that she went through for  
16 the 13 months that she struggled. And BlueCross could  
17 have reached out to her and said the mandate's done,  
18 come on back. You were a good employee. Did they give  
19 her that opportunity? No. No.

20           This is a sophisticated company. They know  
21 what the law was. They knew how to get around the law.  
22 They knew how to tweak things, throw in verbiage that  
23 sounded great. Interactive process. We just want our  
24 employees to be heard. Well, we don't want them at the  
25 table with us when we're going to determine what they're

1     going to do because we think we know better than the  
2     employee.

3                 That's not what the old procedure was. That  
4     was the new procedure designed for one purpose:  
5     Everyone vaccinated --

6                 THE COURTROOM DEPUTY: Time.

7                 MR. HAMILL: -- or you're done.

8                 Thank you.

9                 THE COURT: All right. Thank you, Mr. Hamill.

10                (Subsequent proceedings were heard but  
11                not requested to be transcribed herein.)

12                END OF PROCEEDINGS

13

14                         I, Stephanie Fernandez, do  
15     hereby certify that I reported in machine shorthand the  
16     proceedings in the above-styled cause, and that this  
17     transcript is an accurate record of said proceedings.

16

17                                 s/Stephanie Fernandez  
18                                 Stephanie Fernandez,  
19                                 Official Court Reporter

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